

**EXECUTIVE SECRETARIAT
ROUTING SLIP**

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16	VC/NIC		X		
17	C/AF/DO		X		
18	D/ALA/DI		X		
19	D/OGI		X		
20	NIO/ECON		X		
21	NIO/AF		X		
22	ES		X		
SUSPENSE		7 March 86			
		Date			

Remarks

To 5: Please have an appropriate response prepared for my signature.

Executive Secretary

27 Feb 86

Date

3637 (10-81)

STAT



DEPARTMENT OF THE TREASURY
WASHINGTON

Executive Registry
88- 085/x

February 25, 1986

MEMORANDUM TO: NICHOLAS PLATT
EXECUTIVE SECRETARY
DEPARTMENT OF STATE

STAT


EXECUTIVE SECRETARY
CENTRAL INTELLIGENCE AGENCY

HELEN ROBBINS
EXECUTIVE ASSISTANT
DEPARTMENT OF COMMERCE

FROM: SHERRIE M. COOKSEY *SMC*
EXECUTIVE SECRETARY
DEPARTMENT OF THE TREASURY

SUBJECT: Request for Information on Labor Conditions
in the Republic of South Africa

Please find enclosed a copy of a petition received by the Commissioner of Customs from the United Mine Workers of America, alleging that coal and coal products produced in the Republic of South Africa with the use of forced labor are being imported into the United States in violation of Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

The Customs Service is required by the regulations implementing this law (19 C.F.R. 12.42 et seq.) to conduct an investigation to determine the validity of this allegation. To facilitate that inquiry we would very much appreciate your providing us with whatever information your agency has available or can acquire regarding labor practices used in the mining and production of coal and coal products in South Africa.

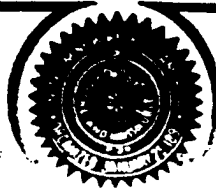
Thank you for your assistance.

Enclosure

cc: Rodney B. McDaniel
Executive Secretary
National Security Council

United Mine Workers of America

MICHAEL H. HOLLAND
GENERAL COUNSEL



TELEPHONE
(202) 842-7330

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N.W.
Washington, D.C.
20005

July 12, 1985

HAND DELIVERED

The Honorable William von Raab
United States Commissioner of Customs
United States Customs Service
1301 Constitution Avenue, N. W.
Washington, D. C. 20229

Dear Commissioner von Raab:

On behalf of the United Mine Workers of America ("UMWA"), the undersigned make the following request, pursuant to 19 U.S.C. § 1307, and set forth the following preliminary statement of facts in support thereof:

I.

Introduction and Request for Hearing

The UMWA requests, pursuant to 19 U.S.C. § 1307 and 19 C.F.R. § 12.42(b), that all necessary action be taken to ban the direct and indirect importation of coal and coal products mined in the Republic of South Africa. 1/ The UMWA is a labor organization within the meaning of § 2(2) of the National Labor Relations Act, and represents approximately 240,000 active and retired coal miners, the vast majority of whom live and work in the United States. In its capacity as representative of coal miners, the UMWA has the requisite standing to request that you invoke the prohibitions of § 1307.

1/ Attached hereto and incorporated by reference herein as Exhibit A is a statement as required by 19 C.F.R. § 12.42(b)(2)-(4).

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The importation of coal into the United States from the Republic of South Africa has caused, and continues to cause, serious injury to the UMWA and its membership. The United States directly or indirectly imported 564,381 tons of South African coal in 1982 and 804,342 tons of coal in 1983. The UMWA membership has suffered a loss of jobs arising from this illegal importation of South African coal.

§ 1307 is expressly designed to protect American workers, such as UMWA members, from competition from imported coal mined by low-wage workers whose labor is exacted under a system of criminal penalties. § 1307 expresses the strong Congressional repugnance against the loss of American jobs from foreign competition that use the criminal law process to depress wages and conditions of employment.

This petition letter sets out the general reasons why the importation of South African coal violates the statute. In addition, by this letter, the UMWA requests a full hearing to present testimonial and other evidence in support of this petition and to make a complete record of the case. Because American coal miners are suffering continuing loss of employment from the violation of § 1307, we request that at the earliest possible date, you schedule a full adversarial hearing, with opportunity for cross-examination, pursuant to § 5 of the Administrative Procedure Act, 5 U.S.C. § 554.

We now turn to the reasons requiring that § 1307 be invoked by you to prohibit any further direct or indirect importation of South African coal into the United States.

II.

Statement of Case

§ 1307 provides as follows:

"All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions

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of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

"Forced labor," as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily."

Literally, the statute applies to three types of labor: (1) convict labor; (2) forced labor, which the statute defines; and (3) indentured labor under penal sanction, which the statute does not explicitly define.

The Black workers who mine South African coal perform their employment under a totalitarian labor system that has aspects of both "forced labor" and "indentured labor under penal sanction," within the meaning of § 1307.

Black workers in South Africa work under these circumstances, as a matter of law, by virtue of § 10 and § 29 of the Black (Urban Areas) Consolidation Act, No. 25 of 1945 (Statutes of the Republic of South Africa). Exhibit B to this Petition is a photocopy of these statutory provisions. In Part III of this petition letter, we will describe these statutory provisions in detail.

Essentially, both §§ 10 and 29 require Black workers living in the "white areas" of South Africa to perform the work prescribed for them by a centralized government system of labor bureaus. Under these sections, if they remain in "white areas" without performing such work, Black workers face possible fines, imprisonment, and deportation to forced-labor camps.

Although Congress defined the term "forced labor" when it enacted § 1307, it did not explicitly define the term "indentured labor under penal sanction." Historically, an indentured laborer was a worker who could be criminally prosecuted for breach of any express or implied term of his

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employment contract. Carter Goodrich, "Indentured Labor" Encyclopedia of Social Sciences (1932); see also, "Indentured Labor," Encyclopedia Britannica (1951).

Likewise, the apartheid system uses a broad framework of criminal laws and processes to require active and continuous employment from all Blacks living in the "white areas" that make up 87 percent country. In fact, through §§ 10 and 29, South Africa makes even harsher use of the criminal laws than employers of indentured labor formerly did.

Compared to apartheid labor, the older form of indentured labor was not nearly as onerous. When Congress enacted § 1307, the most prevalent form of indentured labor was "coolie" labor. Indentured labor was a means for moving "coolies" from "backward," heavily populated areas like China and India to new, less populated areas in the Americas where employers needed cheap and abundant labor.

Indentured labor, however, was a voluntary, temporary relationship. Historically, indentured laborers came from India or China, although many white workers in colonial America were, or at one time had been, indentured laborers. The great inducement of indentured labor was the opportunity to migrate without expense to a new land and later to become a free laborer and citizen in that land. Upon his arrival, the migrant simply had to work out the term of his indenture, usually three to five years. Then he became a free worker, equal in status to every other free worker.

Apartheid labor is much more stringent. First, the Black worker under apartheid cannot, simply by working out his contract, escape the criminal laws related to his employment. Unlike the indentured laborer, he cannot work his way to equal status with other free workers. His subjugation is not temporary but indefinite.^{2/}

Second, the Black worker in a "white area" faces a host of other penal requirements, restrictions, and sanctions that the indentured laborer did not. The indentured laborer could settle with his family on a permanent basis. Usually, however, a Black migrant worker lives in a single-sex state-owned barrack, called a "hostel." He cannot settle permanently or bring his wife and children. He must comply with strict

^{2/} Where appropriate herein, the masculine gender shall include the feminine.

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curfews, avoid the white urban areas, and at certain times may not go to public places of any kind without the employer's written permission.

Third, the Black worker faces deportation when his work is not needed by his white employers. By contrast, indentured labor was a guarantee of permanent emigration. The indentured "coolies" of India voluntarily went to Mauritius, British Guinea, Natal, Fiji, and elsewhere. The indentured "coolies" of China went to Cuba and Peru. Once settled, these workers could stay permanently in their host country.

The apartheid system, however, not only regulates the Black worker in going from the "bantustan" to the "white area," where he works under penal sanctions, but also this insures deportation back to the "homeland" when his work is not needed.

In apartheid theory, the Black worker will never have control as to how, where, for whom, or for what reward he will work. Under a criminal law framework, he is moved back and forth, between "homeland" and "white area," at the will of the government. In short, apartheid labor differs from indentured labor only in that it employs the criminal law to determine the employment relationship to a greater and harsher extent. The apartheid theory is predicated upon use of the penal power of the state, and has all the aspects of a totalitarian system. It employs the terror of arbitrary penal laws to create and maintain an enslaved labor force.

III.

The Apartheid System: A New And Harsher Form Of Indentured And Forced Labor

By any standard, the apartheid labor system represents the precise social evil that § 1307 seeks to redress, namely, the use of criminal sanctions to mobilize and exploit a cheap pool of labor. In this petition letter, we will briefly describe only some of the main features of the totalitarian system of black labor in South Africa. Because of the scope, detail, and complexity of South African apartheid laws, those statutes may actually be applied differently in different cases. Arbitrary application of the law, however, is an element of a totalitarian system. Even the relaxed application of penalties in one context underscores their harshness for later situations.

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A. "White areas" and Black "homelands." Central to the apartheid system is the division of the country into "white areas" and Black "homelands," and the use of the pass laws (with criminal sanctions) to regulate the movement of Black workers between them. The white-minority government has carved out ten small territorial areas that are designated as "homelands," "bantustans," or "reservations," for Black South Africans. The "white areas" comprise over 87 percent of the territory of South Africa, and the Black homelands comprise a meagre 13 percent. Yet the Black homelands contain over 50 percent of the population.

Under the apartheid legal system, the Black work force falls into three categories:

1. Blacks who are so-called "migrant" workers from the homelands to the "white areas":

In apartheid theory, all of the homelands either are now or one day will be independent. The Black workers are only "temporarily" in "white" areas for the particular employment endorsed on their pass books. In fact, of course, most of them spend their entire working lives as workers in South Africa's white-controlled economy. The migrant workers number millions. The Black miners live in the single-sex hostels, or state-owned barracks, far from the white urban areas.

2. Blacks who are semi-permanent but illegal residents in the "white areas":

These "illegals" live not in the "bantustans" but live in the "townships," or ghettos, outside the major South African cities. For example, Soweto, which is the largest and best-known township, is a black ghetto outside Johannesburg. Many of the Blacks in these projects do not have valid pass books. They are subject to criminal prosecution at any time for violation of the pass laws and other criminal statutes. They are suffered to remain, so long as they perform the work prescribed to them and do not engage in any activity permitted to workers in free countries. They number millions, and commute to work in the urban areas.

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3. Blacks who are semi-permanent legal residents in the urban or "white area":

These make up the smallest group. As discussed below, even these Blacks must hold employment or face criminal sanctions or deportations.

The Black miners in the coal and gold-mining industries are nearly all so-called migrant workers. Some of them, whose homelands have become "independent," have been stripped of their South African citizenship rights. Others, however, whose homelands have not yet become "independent," are still considered citizens of South Africa, although they are confined by the pass laws to their respective bantustans if their pass books are not validly endorsed for employment in the "white areas."

The goal of apartheid theory is to turn as many Blacks as possible into rightless migrants, strip them of their South African citizenship, and declare them "citizens" of one or more of the homelands. Yet at the same time, it is necessary to bring back millions of these rightless Blacks into the "white areas" to perform the jobs prescribed for them by the government labor bureaus.

Significantly, the United States and every other country has refused to recognize that these bantustans are independent countries, or that migrant laborers in "white areas" have the legal status of aliens. South Africa, therefore, cannot try to escape the ban of § 1307 by characterizing the Black South Africans as "illegal aliens." That is simply the pretext that South Africa uses to compel labor from the Blacks in the "white areas." This aspect of the apartheid system makes it worse, not better, than the exploitation of the "coolies." South Africa merely uses the fiction of a "homeland," a fiction which has been denounced by our country and others, to strip Black workers of their citizenship and then compel them to work when they are in the "white areas" through the criminal provisions of the pass laws.

B. The labor bureaus. Under the Black Labour Act No. 67 of 1964 ("Labour Act"), a centralized state system of labor bureaus recruits the Blacks living in the bantustans and "indentures" them to particular jobs. See, Labour Act, §§ 4, 21. The bureaus ordinarily make direct placement of the Black workers from the bantustans to the "white areas." They endorse the pass books and allow entry into those areas only to work at

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such designated jobs. Blacks have no freedom to choose the jobs prescribed to them.

Under § 13 of the Labour Act, the bureaus enter into contracts with the Black workers. The contracts are usually for eleven months, and remain under the control of the bureaus. At the end of the contract period, the Black must return to the bantustan and re-register with the bureau. Of course, no Black may leave the bantustan without receiving a contract from the bureau, and having entered a contract, the Black can obtain no other job. The labor bureaus handle recruitment of South African coal miners.

The "migrant workers" then leave the bantustans for approximately eleven-month periods. As stated above, many of them spend years working for the same employer, and return home to their wives and children only on brief leaves. In theory, however, at the end of the eleven-month period, the Black must obtain a renewal of his contract. Some do so under the "call-in card" system, without a break in service. See, Rikhoto v. East Rand Administration Board, South African Labour Reports (hereafter "SALR") 1983(4) 278. At all times, the Black indentured miner is exposed to the totalitarian penal system - not only to the criminal law as written, but as practiced with purposeful arbitrary application and consequent terrorization of the workers.

C. Apartheid Law Before the First UMWA Suit. Until 1974, South Africa maintained laws that allowed for criminal prosecution of Blacks who breached the contracts they entered into with the labor bureaus. In 1974, the UMWA initiated a proceeding before the Commissioner under § 1307. In its petition, the UMWA stated that this aspect alone of South African law, with nothing more, gave Black workers the status of "indentured workers under penal sanction" within the meaning of § 1307. §§ 13(6)(b) and 15 of the Labour Act formerly provided as follows:

§ 13(6)(b)

"(b) A Bantu who has entered into such a contract as is mentioned in paragraph (a), and who without lawful cause fails or refuses to enter upon his contract of service or fails or refuses to enter the service of the member of such group of employers to whom he may be allotted by the said group or by any person lawfully acting on behalf of the said group, shall be guilty of an offence and

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liable on conviction to a fine not exceeding fifty rand, or, in default of payment, to imprisonment for a period not exceeding three months: Provided that any such Bantu shall as far as is practicable be given an opportunity to indicate at the time of allotment to which member of the group of employers who requires labour he wished to be allotted."

"15. Offences by Bantu labourers in breach of contract. (1) Any Bantu labourer who--

"(a) without lawful cause deserts or absents himself from this place of employment or fails to enter upon or carry out the terms of his contract of employment;

"(b) wilfully and unlawfully does or omits to do anything the doing or omission whereof causes or is likely to cause injury to persons or property;

"(c) neglects to perform any work which it is his duty to perform or unfits himself for the proper performance of his work through the use of dagga or other habit-forming drugs or by having become or being intoxicated during working hours;

"(d) refuses to obey any lawful command of his employer or any person lawfully placed in authority over him or uses insulting or abusive language to his employer or any person lawfully placed in authority over him;

"(e) after having entered into an agreement of service, whether oral or in writing, with a labour agent or holder of an employer's recruiting licence, and after having received an advance in respect thereof, accepts another advance from another labour agent or holder of an employer's recruiting licence in consideration of entering upon any other contract of service before he has completed his terms of service under the first-mentioned agreement,

"shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or, in default of payment, to imprisonment for a period not exceeding three months."

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During the litigation, South Africa, for purely cosmetic reasons, repealed the above statutory sections from the Black Labour Act. In writing about the case in a new book, Freedom Rising (MacMillan, 1985), author James North states at page 322:

"The frightened apartheid regime moved with unusual speed, repealing legislation under which black workers who quit their jobs without permission could be tried as criminals. There had been seventeen thousand prosecutions under the laws the previous year."

South Africa, however, repealed the above provisions only because it possessed an ample arsenal of other criminal sanctions with which to regulate Black workers, particularly §§ 10 and 29 of the Black (Urban Areas) Consolidation Act.

D. The Pass Laws: Section 10 Offenses. The pass laws effectively compel all Black workers living in the "white areas" to perform the contracts prescribed for them, or face penal sanctions. These pass laws constitute the tightest permit control system in the world. A contract violation creates a permit violation, and a Black miner is presumed guilty of that violation the instant he ceases his employment in a "white area."

The basis of the entire pass-law system is § 10 of the Black (Urban Areas) Consolidation Act, No. 25 of 1945 (hereafter "the Act"). In its statement of purpose, the Act expressly seeks to require Blacks living in "white areas" to work in the white economy. The Act expressly regulates:

". . . the ingress of Blacks into and their residence in ("white areas"); . . . [and establishes] the procedure to deal with idle or undesirable Blacks in areas outside the scheduled Black and released areas and with Blacks whose presence in the prescribed areas is detrimental to the maintenance of peace and order."

Consistent with this purpose, § 10(1) states the following basic principle: "No Black shall remain for more than seventy-two hours in a prescribed area" All or virtually all the "white areas" are prescribed areas within the meaning of the Act. § 10(1) permits the Black to remain in a "white area," only if he meets one of the following exceptions:

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"(a) he has, since birth, resided continuously in such area; or

"(b) he has worked continuously in such area for one employer for a period of not less than ten years or has lawfully resided continuously in such area for a period of not less than fifteen years, and has thereafter continued to reside in such area and is not employed outside such area and has not during either period or thereafter been sentenced to a fine exceeding five hundred rand and or to imprisonment for a period exceeding six months; or
[Para. (b) amended by s. 3 of Act No. 16 of 1979.])

"(c) such Black is the wife, the unmarried daughter, or the son under the age of eighteen years, of any Black mentioned in paragraph (a) or (b) of this subsection and, after lawful entry into such prescribed area, ordinarily resides with that Black in such area; or

[Para. (c) substituted by s. 6 of Act No. 97 of 1978.]

"(d) in the case of any other Black, permission so to remain has been granted by an officer appointed to manage a labour bureau in terms of the provisions of paragraph (a) of sub-section (6) of section twenty-one ter of the Black Labour Regulations Act, 1911 (Act No. 15 of 1911), due regard being had to the availability of accommodation in a Black residential area."

Black coal miners and other "migrant" workers fall under sub-paragraph (d). They must carry a permit that indicates their assignment or "indenture" to the job prescribed for them by the labor bureau. Black workers who fall within sub-paragraphs (a) through (c) are those few who are permanent legal residents of the "white areas." A proviso to § 10(1), however, states that they also must keep some form of employment, or they will lose their privileged resident status.

§ 10(2) further describes the permit requirement imposed on the "migrant" workers:

"(2) Any Black who has in terms of paragraph (d) of sub-section (1) been permitted to remain in a prescribed area, shall be given a permit which may be by means of an endorsement in a reference

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book or a document of identification referred to in the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952), indicating the purpose for which and the period during which such Black may remain in that area, the person by whom and the class of work, if any, in which such Black may be employed and any other conditions which may have been imposed in granting such permission."

Under § 10(2), all the "migrant" workers must carry their pass books, or reference books, at all times. By means of these pass books, and a computerized record system in Pretoria, connected to all the main centers of the country, the white authorities are able to control over 23 million Black South Africans.

The Black workers must produce the reference book on demand of "any authorized officer." § 43, Black Labour Act; § 13, Black (Abolition of Passes and Co-ordination of Documents) Act, No. 67 of 1952 (hereafter "the Passes Act"). If he fails to do so, he may be arrested and brought before the Black Affairs Commissioner for "further enquiry." Passes Act, § 5(2). Even if he has merely lost the book, he can be detained without bail for thirty days until the "enquiry" is completed or a new book is issued to him. Passes Act, § 5(4).

In his reference book, every Black worker must have the "prescribed particulars" of his employment contract (as prescribed, that is, by the labor bureau). As stated in section 10(2), the reference book must have a stamp or "endorsement" that indicates the Black's employer, the area in which the employer is located, and the area in which the Black is permitted to stay. An "authorized officer" can tell at a glance what work the Black should be performing.

The reference book ensures that the Black cannot quit his employment for another job. If the Black "deserts from his service or if such contract is terminated," the employer shall advise the labor bureau. Passes Act, § 8(2). The employer must also record in the reference book any termination of the contract. Passes Act, § 8(2).

Likewise, no one may employ a Black worker if:

". . . it appears from (his) reference book . . . that he entered into a contract of service with some other person and such other person has not

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... recorded in such book ... the fact that the ...
contract has been terminated."

Passes Act, § 8 ter. (1)

Nor may anyone employ a Black worker who fails to furnish a reference book at all. Passes Act, § 8 dis.

In effect, under this system, every Black worker must carry his employment contract on his person. With totalitarian zeal, the government uses the penal sanctions of § 10 and the Passes Act to keep a running check on and control over the employment status of every Black worker.

Under § 10, the government can not only monitor but also compel the employment of every affected Black worker. § 10(4) makes that clear, with the following penal sanctions:

"(4) Any person who contravenes any provision of this section, or who remains in any area for a purpose other than that for which permission so to remain has been granted to him, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or in default of payment to imprisonment for a period not exceeding three months or to both such fine and such imprisonment or to such imprisonment without the option of a fine."

Under § 10, if a Black worker remains in "any area" for a purpose other than discharging his prescribed employment, he can be fined, imprisoned or both.

By virtue of this §, it is a crime for any Black living in a "white area" to "desert from his service." It is a crime to leave such service, without authorization, even for other gainful employment. Like an indentured laborer, the Black worker belongs to one and only one employer. Under § 10, it is also a crime for him simply to be in "any area" other than the one in which his coal mine, factory or mill is located.

Under § 10(4), every Black worker who is not performing the employment prescribed in his reference book is presumed guilty of a criminal offense. § 10(5) expressly states:

"In any criminal proceedings against a Black in respect of a contravention of the provisions of this section, it shall be presumed until the

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contrary is proved that such Black remained in the area in question for a period longer than seventy-two hours and that such Black is not permitted under sub-section (1) to be in such area."

§ 14 of the Act provides further criminal penalties. If convicted under § 10(4), the Black worker can be "removed" from the area and "detained" in a forced-labor camp. § 14(1A) authorizes the penalty of compulsory labor, as follows:

"A Black removed under subsection (1) to a rural village, settlement, rehabilitation scheme, institution or other place indicated by the Secretary shall be detained thereat for such period and perform thereat such labour as many be prescribed by the law in terms of which such rural village, settlement, rehabilitation scheme, institution or place was established."

§ 14(2) states that the Black worker convicted under § 10 can be detailed "in a prison or police cell or lock-up" without bail until it is determined what penalty will be imposed.

There are hundreds of thousands of prosecutions under the pass laws every year, according to the Annual Surveys of the South African Institute for Race Relations. See, South African Institute for Race Relations (ed.), Annual Surveys of the South African Institute for Race Relations (1981, 1982, 1983); see also, Statement of South African Minister for Law and Order, as quoted in Rand Daily Mail, March 12, 1985. That respected reference book states the full conditions of the employment that the Black worker in a "white area" is obliged to discharge. As soon as he ceases to perform them, he faces criminal sanctions under § 10. See also, § 13 of the Act. Under § 10(5), he is immediately presumed guilty of a permit violation, and may be fined, imprisoned or sent to a forced labor camp. While he may not be prosecuted for breach of contract as such, that is purely a legal formality. In every meaningful sense, the Black worker is an indentured laborer under penal sanction.

E. Section 29 Offenses. To the extent (if any) that § 10 may fall short of imposing compulsory labor on every affected Black worker, then § 29 of the Act surely does so. § 29 applies not only to the "migrant" workers but also the Blacks who are permanent legal residents of the "white areas."

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Under this section, the government can arrest without warrant, detain or sentence to forced labor any "idle" Black worker.

§ 29(1) states as follows:

"Whenever any authorized officer has reason to believe that any Black within an area outside a scheduled Black area or a released area as defined in the Development Trust and Land Act, 1936 (Act No. 18 of 1936), is an idle or undesirable person, he may, notwithstanding the provisions of any other law, without warrant arrest that Black or cause him to be arrested and take him or cause him to be taken before a Commissioner to be dealt with in accordance with the provisions of this section."

§ 29(1) applies to every Black in a "white area" who is not "lawfully employed." § 29(2) broadly defines an "idle person" to reach every Black worker who has quit or ceased his employment, as follows:

"For the purposes of sub-section (1) an "idle person" means a Black, other than a bona fide Black housewife--

"(a) over the age of fifteen years and under the age of sixty years, in the case of a female, and sixty-five years, in the case of a male, who, whether or not such Black is in receipt of adequate maintenance from his parent or guardian--

"(i) though capable of being employed, is not lawfully employed and has, for a period, or for periods in the aggregate, of not less than 122 days during the preceding twelve months, not been lawfully employed and is not bona fide engaged in any business, trade, profession or other remunerative activity for which he is in terms of any law licensed or registered with the authority of a labour bureau: Provided that this subparagraph shall not apply in the case of a Black who is registered as a work seeker and was not lawfully offered employment in the preceding 122 days or who is a pupil or student at an

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educational institution, or who, having completed a course of study at one institution, is awaiting admission to another institution; or

[Sub-para. (1) substituted by s. 3(a) of Act. No. 12 of 1978.]

"(ii) has on three consecutive occasions refused or failed without lawful cause to accept suitable employment offered to him by a labour bureau: Provided that no reason for the refusal or failure to take up employment shall be considered a lawful cause unless such reason is tendered to the labour bureau at the time the employment is offered or within three days thereafter; or

"(iii) has on more than two occasions during any period of six months, after having taken up employment offered to him by a labour bureau, failed due to his own misconduct, neglect, intemperance or laziness, to keep such employment for at least one month; or

"(iv) has on more than three occasions over any period of one year been discharged from employment due to his own misconduct;

"(b) who because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise), fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or

"(c) who is addicted to drink or drugs, in consequence of which he is unable to provide for his own support or is unable or neglects to provide for the support of any dependant whom he is legally liable to maintain; or

"(d) who has been required under any law to depart from the area concerned within a period specified in terms of such law and not to return to such area within a period so specified and has failed to depart therefrom

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within the period so specified or has returned thereto before the expiration of the period so specified; or

"(e) who habitually begs for money or goods or induces others to beg for money or goods on his behalf."

The Act imposes criminal penalties on a Black even if he has adequate support or income and does not need or want to work. By virtue of § 29, apartheid labor becomes not only indentured labor but forced labor within the meaning of § 1307.

Under § 29, for example, the Black worker can be convicted not only when he is unemployed after a breach of contract but also when he is "normally unemployed." He can be convicted if:

". . . he loses his employment twice in a six-month period because of "misconduct, neglect, interperance or laziness," [§ 29 (2)(a)(iii)];

"he turns down work offered by a labor bureau on three consecutive occasions [§ 29(2)(a)(ii)];

"or he has squandered his means, or cannot support one or more of his dependents [§ 29(2)(b)]"

§ 29(7)(b) through (e) sets forth the penal sanctions for the "crime" of being an "idle person." When the Black worker has been convicted, the Commissioner of Black Affairs may order his detention in a "rehabilitation center," or order him to perform three alternative kinds of "forced labor." Specifically, the Commissioner may:

"(b) order that such Black be sent to and be detained in a retreat, rehabilitation centre or certified retreat established or deemed to have been established under any law; or

"(c) order that such Black be sent to and be detained for a period not exceeding two years in a farm colony, refuge, rescue home or similar institution established or approved under the Prisons Act, 1959 (Act No. 8 of 1959), and perform thereat such labour as may be prescribed under that Act or the regulations made thereunder for the persons detained therein; or

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"(d) order that such Black be sent to any rural village, settlement, rehabilitation scheme, institution or other place indicated by the Secretary, either generally or specially, within a scheduled Black area or released area as defined in the Development Trust and Land Act, 1936, and established or approved under any law, and be detained thereat for such period and perform thereat such labour as may be prescribed by or under that law; or

"(e) if such Black agrees to enter and enters into a contract of employment with such an employer and for such a period as that Commissioner may approve, permit such Black to enter into employment in accordance with the terms of that contract and, if he deems fit, order that such Black be detained in custody pending his removal to the place at which he will in terms of that contract be employed: Provided that where any such contract is terminated before the expiration of the period approved by the Commissioner, such Black shall again be liable to be dealt with as prescribed in this sub-section and may for this purpose, pending an order by the Commissioner, be detained in custody. . . ."

§ 29, therefore, places every Black worker under threat of forced labor or detention. Every Black who breaks his contract runs the risk of banishment to a forced-labor camp. Subparagraph (e) permits the Black, as an alternative, to enter a new employment contract, but provides penal sanctions for breach of that contract. Supposedly, since repealing §§ 13 and 15 of the Black Labour Act, the government no longer imposed such sanctions. In fact, South Africa violates § 1307, not only by directly using forced labor or indentured labor under penal sanction, but also by threatening forced labor for every Black worker who does not live up to his contract.

Typically, under § 29, as under other apartheid laws, the Black worker is presumed guilty of being an "idle person" unless he can prove otherwise. See, § 29(6)(b). Indeed, if he simply fails to "give a good account of himself," as § 29(5) vaguely puts it, he can be convicted. He then immediately loses the few property and other rights he may have had, including any right to live in a "white area." See, § 29(10)-(15).

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Although reprehensible, § 29 is a live, vigorously enforced law. In the recent case of In re Duma, SALR 1983(4) 466, the court upheld the conviction under § 29 of a young widow with two infants and no steady employment except occasional domestic work. The court stated:

"A number of judgments delivered by the Supreme Court over the years have called § 29 drastic in its general effect. That seems the least which can be said of it. One has only to read it to feel this. Its harshness is foreign to the idea, cherished by lawyers everywhere, that the law's business is first and foremost to protect the liberties of the individual, that the safety of the public rests largely on the law's success in doing so. No counterpart, nothing at all similar, can be found in any system of jurisprudence with which we would like ours to be compared. The section has been amended from time to time, on some occasions in apparent reaction to judicial interpretations of it curbing undue exuberance in its enforcement. The amendments have not relaxed its provisions. Instead these have got progressively tighter. The current version is the toughest yet. There is little our Courts can do about legislation of this kind. They can make their distaste for such known, for what that may be worth. It is not a great deal. Parliament seldom takes notice once some policy it considers important is involved."

§ 29 is a uniquely cruel means of exploiting South Africa's work force. For the reasons stated above, § 29 alone would bring the apartheid labor system within the ban of § 1307.

IV

The Proviso

Although § 1307 is designed to protect American labor from competition with forced labor or indentured labor, a proviso to the statute states as follows:

"(B)ut in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in

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such quantities in the United States as to meet the
consumptive demands of the United States."

In the case of the U.S. coal market, the proviso clearly
does not apply. The U.S. Department of Energy offers the
following figures for net tonnage of U.S. production and
consumption of coal:

	<u>1983</u>	<u>1984</u> (first nine months)
U.S. coal production	782,091,000	890,143,000
U.S. coal consumption	736,672,000	795,144,000
South African imports (U.S.)	804,342	490,314
Total Imports (U.S.)	1,271,000	1,218,000

(Source: United States Department of Energy)

U. S. production of coal vastly exceeds domestic
consumption annually by 50 to 100 million tons. The proviso
cannot be invoked to prevent application of the statute.

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Conclusion

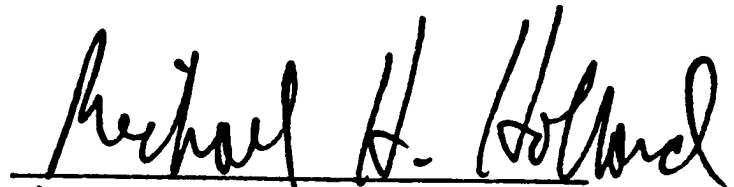
§ 1307 is a remedial statute, designed to protect American labor, and it should be broadly applied. Although the totalitarian apartheid labor system of today did not exist in 1930, when Congress enacted the statute, it is clearly within the scope of the evils that § 1307 was designed to address. It presents a more sinister version, in modern form, of both "forced labor" and "indentured labor under penal sanction."

As a statement of national policy, extensible to the modern evil of apartheid, § 1307 should be applied to ban the importation of South African coal immediately.

Please contact Michael H. Holland, General Counsel, UMWA, or Earl V. Brown, Jr., Associate General Counsel, UMWA, at the address and telephone number listed on this letterhead with respect to any communication about this Petition. We further request to be advised of any communication to and/or from the Republic of South Africa, or its agents, respecting this matter, and request copies of any documents sent to and/or received from the Republic of South Africa.

Respectfully submitted,

By:



Michael H. Holland
Earl V. Brown, Jr.
United Mine Workers of America
900 Fifteenth Street, N. W.
Washington, D. C. 20005
202 / 842-7330

Despres, Schwartz & Geoghegan
77 West Washington Street
Chicago, Illinois 60602
312/372-2511

Attorneys for the UMWA

Exhibit A

Pursuant to 19 C.F.R. § 12.42(b), the UMWA submits the following information not presented in the body of its petition letter.

The product at issue is coal, a carbonaceous mineral, and includes anthracite, bituminous, sub-bituminous, and lignite grades of coal. Coal is principally used in this country by utilities in the generation of steam, by the coke industry to create coke, for the heating of institutions, and by the chemical industry to create coal by-products.

The principal interested domestic producers of coal are members of four associations, the Bituminous Coal Operators Association, the National Coal Association, the American Mining Congress, and the Mining and Reclamation Council. . They may be advised of this Petition as follows:

Bituminous Coal Operators Association, Inc.
918 Sixteenth Street, N. W.
Washington, D. C. 20006

National Coal Association
1130 Seventeenth Street, N. W.
Washington, D. C. 20036

American Mining Congress
1920 "N" Street, N. W.
Washington, D. C. 20036

Mining & Reclamation Council of America
1575 "I" Street, N. W.
Washington, D. C. 20005

Exhibit B

Statutory Appendix

Black (Urban Areas) Consolidation Act,

No. 25 of 1945

Sections 10 and 29

10. Restriction of right of Blacks to remain in certain areas.—(1) No Black shall remain for more than seventy-two hours in a prescribed area unless he produces proof in the manner prescribed that—

- (a) he has, since birth, resided continuously in such area; or**
- (b) he has worked continuously in such area for one employer for a period of not less than ten years or has lawfully resided continuously in such area for a period of not less than fifteen years, and has thereafter continued to reside in such area and is not employed outside such area and has not during either period or thereafter been sentenced to a fine exceeding five hundred rand or to imprisonment for a period exceeding six months; or**
[Para. (b) amended by s. 3 of Act No. 16 of 1979.]
- (c) such Black is the wife, the unmarried daughter, or the son under the age of eighteen years, of any Black mentioned in paragraph (a) or (b) of this subsection and, after lawful entry into such prescribed area, ordinarily resides with that Black in such area; or**
[Para. (c) substituted by s. 6 of Act No. 97 of 1978.]
- (d) in the case of any other Black, permission so to remain has been granted by an officer appointed to manage a labour bureau in terms of the provisions of paragraph (a) of sub-section (6) of section twenty-one ter of the Black Labour Regulation Act, 1911 (Act No. 15 of 1911), due regard being had to the availability of accommodation in a Black residential area:**

Provided that whenever any Black who is under this sub-section qualified to remain within any such area for a period in excess of seventy-two hours, becomes disqualified so to remain and cannot within that area or any other such area or outside such area but outside a scheduled Black area or released area as defined in the Development Trust and Land Act, 1936 (Act No. 18 of 1936), obtain employment and accommodation for himself, his wife and children, if any, the Minister shall, if satisfied that such Black cannot so obtain employment and such accommodation, provide that Black with a residential site within any such scheduled Black area or such released area.

[Sub-s. (1) amended by s. 30 (a) of Act No. 36 of 1957 and substituted by s. 47 (a) of Act No. 42 of 1964.]

(1)bis

[Sub-s. (1)bis inserted by s. 3 (a) of Act No. 16 of 1955, amended by s. 30 (b) of Act No. 36 of 1957 and deleted by s. 47 (b) of Act No. 42 of 1964.]

(2) Any Black who has in terms of paragraph (d) of sub-section (1) been permitted to remain in a prescribed area, shall be given a permit which may be by means of an endorsement in a reference book or a document of identification referred to in the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952), indicating the purpose for which and the period during which such Black may remain in

that area, the person by whom and the class of work, if any, in which such Black may be employed and any other conditions which may have been imposed in granting such permission.

[Sub-s. (2) amended by s. 5 (b) and (c) of Act No. 16 of 1955 and by s. 30 (d) of Act No. 36 of 1957 and substituted by s. 47 (e) of Act No. 42 of 1964.]

(3) Any Black who, having obtained employment within an area referred to in sub-section (1), has been refused permission to remain in that area, may appeal against such refusal to the Chief Commissioner for the area in question, whose decision on any such appeal shall be final, and the Commissioner having jurisdiction in that area may, in the event of such an appeal being lodged, in his discretion grant permission to the Black concerned to remain in the area in question pending the decision of such Chief Commissioner on the appeal.

[Sub-s. (3) amended by s. 47 (d) of Act No. 42 of 1964.]

(4) Any person who contravenes any provision of this section, or who remains in any area for a purpose other than that for which permission to remain has been granted to him, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or in default of payment to imprisonment for a period not exceeding three months or to both such fine and such imprisonment or to such imprisonment without the option of a fine.

[Sub-s. (4) substituted by s. 3 of Act No. 119 of 1977.]

(5) In any criminal proceedings against a Black in respect of a contravention of the provisions of this section, it shall be presumed until the contrary is proved that such Black remained in the area in question for a period longer than seventy-two hours and that such Black is not permitted under sub-section (1) to be in such area.

[Sub-s. (5) substituted by s. 47 (e) of Act No. 42 of 1964.]

(6)

[S. 10 substituted by s. 27 of Act No. 54 of 1952. Sub-s. (6) deleted by s. 47 (f) of Act No. 42 of 1964.]

29. Manner of dealing with idle or undesirable Blacks.—(1) Whenever any authorized officer has reason to believe that any Black within an area outside a scheduled Black area or a released area as defined in the Development Trust and Land Act, 1936 (Act No. 18 of 1936), is an idle or undesirable person, he may, notwithstanding the provisions of any other law, without warrant arrest that Black or cause him to be arrested and take him or cause him to be taken before a Commissioner to be dealt with in accordance with the provisions of this section.

(2) For the purposes of sub-section (1) an "idle person" means a Black, other than a *bona fide* Black housewife—

(a) over the age of fifteen years and under the age of sixty years, in the case of a female, and sixty-five years, in the case of a male, who, whether or not such Black is in receipt of adequate maintenance from his parent or guardian—

(i) though capable of being employed, is not lawfully employed and has, for a period, or for periods in the aggregate, of not less than 122 days during the preceding twelve months, not been lawfully employed and is not *bona fide* engaged in any business, trade, profession or other remunerative activity for which he is in terms of any law licensed or registered with the authority of a labour bureau: Provided that this subparagraph shall not apply in the case of a Black who is registered as a work seeker and was not lawfully offered employment in the preceding 122 days or who is a pupil or student at an educational institution, or who, having completed a course of study at one institution, is awaiting admission to another institution; or

[Sub-para. (i) substituted by s. 3 (a) of Act No. 12 of 1978.]

(ii) has on three consecutive occasions refused or failed without lawful cause to accept suitable employment offered to him by a labour bureau: Provided that no reason for the refusal or failure to take up employment shall be considered a lawful cause unless such reason is tendered to the labour bureau at the time the employment is offered or within three

- (iii) has on more than two occasions during any period of six months, after having taken up employment offered to him by a labour bureau, failed due to his own misconduct, neglect, intemperance or laziness, to keep such employment for at least one month; or
 - (iv) has on more than three occasions over any period of one year been discharged from employment due to his own misconduct;
 - (b) who because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise), fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or
 - (c) who is addicted to drink or drugs, in consequence of which he is unable to provide for his own support or is unable or neglects to provide for the support of any dependant whom he is legally liable to maintain; or
 - (d) who has been required under any law to depart from the area concerned within a period specified in terms of such law and not to return to such area within a period so specified and has failed to depart therefrom within the period so specified or has returned thereto before the expiration of the period so specified; or
 - (e) who habitually begs for money or goods or induces others to beg for money or goods on his behalf.
- (3) For the purposes of sub-section (1) an "undesirable person" means a Black who—
- (a) has been convicted more than once over any period of five years of an offence mentioned in the Third Schedule to the Criminal Procedure Act, 1955 (Act No. 56 of 1955), other than an offence against the laws for the prevention of the supply of intoxicating liquor to Blacks or coloured persons; or
 - (b) has been convicted of selling or supplying intoxicating liquor, other than sorghum beer, or of being in unlawful possession of any such liquor or has been convicted more than once within a period of three years, of selling or supplying sorghum beer or of being in unlawful possession of sorghum beer; or
 - (c) has been convicted of any offence involving public violence in the area concerned; or
 - (d) has been convicted of any offence under any law relating to the illicit possession, conveyance or supply of habit-forming drugs in the area concerned; or
 - (e) has been convicted of any offence involving violence to an officer entrusted with the administration of Black affairs in the area concerned, while carrying out his duties as such and has been sentenced to imprisonment, either with or without the option of a fine, for a period in excess of fourteen days; or
 - (f) has been convicted of any offence for being in possession of an unlicensed firearm in the area concerned; or
 - (g) has been convicted of any offence relating to malicious injury to property belonging to the urban local authority concerned; or
 - (h) has been convicted of any offence under section ten, eleven, twelve or thirteen of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956); or
 - (i) has been convicted of any offence in circumstances in which the provisions of section two of the Criminal Law Amendment Act, 1953 (Act No. 8 of 1953), apply; or
 - (j) has been convicted of any offence under the Unlawful Organizations Act, 1960 (Act No. 34 of 1960); or
 - (k) has been convicted of any offence under section twenty-one of the General Law Amendment Act, 1962 (Act No. 76 of 1962).
- (4) A Black arrested under sub-section (1) shall within seventy-two hours after arrest be brought before a Commissioner.

(5) The Commissioner before whom a Black is brought under sub-section (4) shall enquire into the allegations made against such Black and require such Black to give a good and satisfactory account of himself and may for this purpose appoint an authorized officer or an officer of the public service to lead the evidence at such enquiry.

(6) (a) If a Black who has been required under sub-section (5) to give a good and satisfactory account of himself fails to do so, the Commissioner enquiring into the matter shall declare such Black to be an idle person or an undesirable person, according to the circumstances.

(b) Where there is any doubt as to whether a Black falls within the category defined in sub-paragraph (i) of paragraph (a) of sub-section (2), the burden of proof that he does not fall within such category shall be upon such Black.

(7) If a Commissioner declares any Black to be an idle or undesirable person, he may—

- (a) by warrant addressed to any member of the South African Police order that such Black be removed from the area concerned and sent to his home or to a place indicated by such Commissioner and that he be detained in custody pending his removal; or
- (b) order that such Black be sent to and be detained in a retreat, rehabilitation centre or certified retreat established or deemed to have been established under any law; or
- (c) order that such Black be sent to and be detained for a period not exceeding two years in a farm colony, refuge, rescue home or similar institution established or approved under the Prisons Act, 1959 (Act No. 8 of 1959), and perform thereat such labour as may be prescribed under that Act or the regulations made thereunder for the persons detained therein; or
- (d) order that such Black be sent to any rural village, settlement, rehabilitation scheme, institution or other place indicated by the Secretary, either generally or specially, within a scheduled Black area or released area as defined in the Development Trust and Land Act, 1936, and established or approved under any law, and be detained thereat for such period and perform thereat such labour as may be prescribed by or under that law; or
- (e) if such Black agrees to enter and enters into a contract of employment with such an employer and for such a period as that Commissioner may approve, permit such Black to enter into employment in accordance with the terms of that contract and, if he deems fit, order that such Black be detained in custody pending his removal to the place at which he will in terms of that contract be employed: Provided that where any such contract is terminated before the expiration of the period approved by the Commissioner, such Black shall again be liable to be dealt with as prescribed in this sub-section and may for this purpose, pending an order by the Commissioner, be detained in custody; or
- (f) if such Black at the date of commencement of the enquiry referred to in sub-section (4), is over the age of fifteen years but under the age of nineteen years, order that such Black be sent to his home or parents or to an institution established under any law and be detained in such institution for a period prescribed under that law: Provided that whenever no or insufficient evidence is available as to the age of such Black, the Commissioner enquiring into the matter may estimate the age of such Black by his appearance or from any information which is available, and the age so estimated shall for the purpose of this paragraph be deemed to be the true age of that Black and to have been attained on the date it was so estimated.

(8) An order made under paragraph (b) of sub-section (7) shall have the same effect as if it had been made under sub-section (6) of section fifteen of the Retreats and Rehabilitation Centres Act, 1963 (Act No. 86 of 1963).

(9) In addition to any order made in terms of sub-section (7), the Commissioner may further order that the Black concerned shall not at any time thereafter, or during the period specified in the order, enter or remain in any area indicated in the order, except with the written permission of the Secretary.

(10) Any Commissioner having jurisdiction in the area in question may, if a sound reason exists therefor, suspend the execution of any warrant or order issued in terms of subsection (7) for any period and on any conditions determined by him: Provided that the fact that such a warrant or an order so issued against a Black is the first such warrant or order so issued against him, shall not in itself be regarded as such a sound reason.

[Sub-a. (10) substituted by s. 3 (b) of Act No. 12 of 1978.]

(11) Whenever an authorized officer has reason to believe that any condition of suspension of any warrant or order issued under this section is not being observed by a Black, he or any member of the South African Police may without warrant arrest that Black and take him or cause him to be taken before a Commissioner who may then order the execution of any such warrant or order or may, if satisfied that such Black has through circumstances beyond his control or for any other good and sufficient reason been unable to observe any condition of such suspension, further suspend such execution for any further period and on any conditions determined by him.

(12) If any Black enters or remains in any area in contravention of an order made under sub-section (9), he shall be guilty of an offence, and the court convicting him of such offence shall by warrant order that, after he has paid any fine or served any period of imprisonment to which he may be sentenced in respect of that offence, he be dealt with as provided in paragraph (a) or (b) of sub-section (7).

(13) Any dependant of a Black who is ordered to return to his home or to be removed to any rural village, settlement, rehabilitation scheme, institution or any other place, may be removed, together with his personal effects (including household furniture), at the public expense to the said Black's home or to the place to which he has been ordered to be removed.

(14) A Commissioner enquiring into any matter under this section—

- (a) may authorize the finger-prints of any Black who, in terms of this section, is required to give a good and satisfactory account of himself, to be taken;
- (b) may from time to time adjourn the enquiry and may in such case order that the Black concerned be detained in a prison, police cell or lock-up or other place which such Commissioner considers suitable, or release him on bail *mutatis mutandis* as if he were a person whose trial on a criminal charge before an inferior court is adjourned or postponed;
- (c) shall keep a record of the proceedings and may, in his discretion, summon Blacks to sit as assessors with him and to assist him in an advisory capacity.

[Para. (c) substituted by s. 3 (c) of Act No. 12 of 1978.]

(15) The provisions of the law relating to appeals and to any form of review in criminal cases shall *mutatis mutandis* apply in respect of any order made under paragraph (b), (c), (d) or (f) of sub-section (7) as if such order were a sentence passed by a magistrate's court in a criminal case but the noting of an appeal or the submission for review shall not, save where the Commissioner so determines, suspend the operation of such order.

(16) (a) Nothing in this Act contained shall be construed as preventing an order being made or as invalidating or affecting in any manner whatever an order made under sub-section (7) in respect of a Black falling within any of the categories referred to in paragraph (a), (b) or (c) of sub-section (1) of section ten.

(b) When a Black falling within any of the categories referred to in paragraph (a), (b) or (c) of sub-section (1) of section ten is declared to be an idle or undesirable person, he shall forthwith forfeit any right which he may have acquired by virtue of the operation of any of the said paragraphs, to remain in a prescribed area.

[S. 29 substituted by s. 36 of Act No. 54 of 1952, amended by s. 9 of Act No. 16 of 1955 and by s. 41 of Act No. 36 of 1957 and substituted by s. 61 of Act No. 42 of 1964.]

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contrary is proved that such Black remained in the area in question for a period longer than seventy-two hours and that such Black is not permitted under sub-section (1) to be in such area."

§ 14 of the Act provides further criminal penalties. If convicted under § 10(4), the Black worker can be "removed" from the area and "detained" in a forced-labor camp. § 14(1A) authorizes the penalty of compulsory labor, as follows:

"A Black removed under subsection (1) to a rural village, settlement, rehabilitation scheme, institution or other place indicated by the Secretary shall be detained thereat for such period and perform thereat such labour as many be prescribed by the law in terms of which such rural village, settlement, rehabilitation scheme, institution or place was established."

§ 14(2) states that the Black worker convicted under § 10 can be detained "in a prison or police cell or lock-up" without bail until it is determined what penalty will be imposed.

There are hundreds of thousands of prosecutions under the pass laws every year, according to the Annual Surveys of the South African Institute for Race Relations. See, South African Institute for Race Relations (ed.), Annual Surveys of the South African Institute for Race Relations (1981, 1982, 1983); see also, Statement of South African Minister for Law and Order, as quoted in Rand Daily Mail, March 12, 1985. That respected reference book states the full conditions of the employment that the Black worker in a "white area" is obliged to discharge. As soon as he ceases to perform them, he faces criminal sanctions under § 10. See also, § 13 of the Act. Under § 10(5), he is immediately presumed guilty of a permit violation, and may be fined, imprisoned or sent to a forced labor camp. While he may not be prosecuted for breach of contract as such, that is purely a legal formality. In every meaningful sense, the Black worker is an indentured laborer under penal sanction.

E. Section 29 Offenses. To the extent (if any) that § 10 may fall short of imposing compulsory labor on every affected Black worker, then § 29 of the Act surely does so. § 29 applies not only to the "migrant" workers but also the Blacks who are permanent legal residents of the "white areas."

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Under this section, the government can arrest without warrant, detain or sentence to forced labor any "idle" Black worker.

§ 29(1) states as follows:

"Whenever any authorized officer has reason to believe that any Black within an area outside a scheduled Black area or a released area as defined in the Development Trust and Land Act, 1936 (Act No. 18 of 1936), is an idle or undesirable person, he may, notwithstanding the provisions of any other law, without warrant arrest that Black or cause him to be arrested and take him or cause him to be taken before a Commissioner to be dealt with in accordance with the provisions of this section."

§ 29(1) applies to every Black in a "white area" who is not "lawfully employed." § 29(2) broadly defines an "idle person" to reach every Black worker who has quit or ceased his employment, as follows:

"For the purposes of sub-section (1) an "idle person" means a Black, other than a bona fide Black housewife--

"(a) over the age of fifteen years and under the age of sixty years, in the case of a female, and sixty-five years, in the case of a male, who, whether or not such Black is in receipt of adequate maintenance from his parent or guardian--

"(i) though capable of being employed, is not lawfully employed and has, for a period, or for periods in the aggregate, of not less than 122 days during the preceding twelve months, not been lawfully employed and is not bona fide engaged in any business, trade, profession or other remunerative activity for which he is in terms of any law licensed or registered with the authority of a labour bureau: Provided that this subparagraph shall not apply in the case of a Black who is registered as a work seeker and was not lawfully offered employment in the preceding 122 days or who is a pupil or student at an

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educational institution, or who, having completed a course of study at one institution, is awaiting admission to another institution; or

[Sub-para. (1) substituted by s. 3(a) of Act. No. 12 of 1978.]

"(ii) has on three consecutive occasions refused or failed without lawful cause to accept suitable employment offered to him by a labour bureau: Provided that no reason for the refusal or failure to take up employment shall be considered a lawful cause unless such reason is tendered to the labour bureau at the time the employment is offered or within three days thereafter; or

"(iii) has on more than two occasions during any period of six months, after having taken up employment offered to him by a labour bureau, failed due to his own misconduct, neglect, intemperance or laziness, to keep such employment for at least one month; or

"(iv) has on more than three occasions over any period of one year been discharged from employment due to his own misconduct;

"(b) who because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise), fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or

"(c) who is addicted to drink or drugs, in consequence of which he is unable to provide for his own support or is unable or neglects to provide for the support of any dependant whom he is legally liable to maintain; or

"(d) who has been required under any law to depart from the area concerned within a period specified in terms of such law and not to return to such area within a period so specified and has failed to depart therefrom

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within the period so specified or has returned thereto before the expiration of the period so specified; or

"(e) who habitually begs for money or goods or induces others to beg for money or goods on his behalf."

The Act imposes criminal penalties on a Black even if he has adequate support or income and does not need or want to work. By virtue of § 29, apartheid labor becomes not only indentured labor but forced labor within the meaning of § 1307.

Under § 29, for example, the Black worker can be convicted not only when he is unemployed after a breach of contract but also when he is "normally unemployed." He can be convicted if:

"... he loses his employment twice in a six-month period because of "misconduct, neglect, interperance or laziness," [§ 29 (2)(a)(iii)];

"he turns down work offered by a labor bureau on three consecutive occasions [§ 29(2)(a)(ii)];

"or he has squandered his means, or cannot support one or more of his dependents [§ 29(2)(b)]"

§ 29(7)(b) through (e) sets forth the penal sanctions for the "crime" of being an "idle person." When the Black worker has been convicted, the Commissioner of Black Affairs may order his detention in a "rehabilitation center," or order him to perform three alternative kinds of "forced labor." Specifically, the Commissioner may:

"(b) order that such Black be sent to and be detained in a retreat, rehabilitation centre or certified retreat established or deemed to have been established under any law; or

"(c) order that such Black be sent to and be detained for a period not exceeding two years in a farm colony, refuge, rescue home or similar institution established or approved under the Prisons Act, 1959 (Act No. 8 of 1959), and perform thereat such labour as may be prescribed under that Act or the regulations made thereunder for the persons detained therein; or

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"(d) order that such Black be sent to any rural village, settlement, rehabilitation scheme, institution or other place indicated by the Secretary, either generally or specially, within a scheduled Black area or released area as defined in the Development Trust and Land Act, 1936, and established or approved under any law, and be detained thereat for such period and perform thereat such labour as may be prescribed by or under that law; or

"(e) if such Black agrees to enter and enters into a contract of employment with such an employer and for such a period as that Commissioner may approve, permit such Black to enter into employment in accordance with the terms of that contract and, if he deems fit, order that such Black be detained in custody pending his removal to the place at which he will in terms of that contract be employed: Provided that where any such contract is terminated before the expiration of the period approved by the Commissioner, such Black shall again be liable to be dealt with as prescribed in this sub-section and may for this purpose, pending an order by the Commissioner, be detained in custody. . . ."

§ 29, therefore, places every Black worker under threat of forced labor or detention. Every Black who breaks his contract runs the risk of banishment to a forced-labor camp. Subparagraph (e) permits the Black, as an alternative, to enter a new employment contract, but provides penal sanctions for breach of that contract. Supposedly, since repealing §§ 13 and 15 of the Black Labour Act, the government no longer imposed such sanctions. In fact, South Africa violates § 1307, not only by directly using forced labor or indentured labor under penal sanction, but also by threatening forced labor for every Black worker who does not live up to his contract.

Typically, under § 29, as under other apartheid laws, the Black worker is presumed guilty of being an "idle person" unless he can prove otherwise. See, § 29(6)(b). Indeed, if he simply fails to "give a good account of himself," as § 29(5) vaguely puts it, he can be convicted. He then immediately loses the few property and other rights he may have had, including any right to live in a "white area." See, § 29(10)-(15).

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Although reprehensible, § 29 is a live, vigorously enforced law. In the recent case of In re Duma, SALR 1983(4) 466, the court upheld the conviction under § 29 of a young widow with two infants and no steady employment except occasional domestic work. The court stated:

"A number of judgments delivered by the Supreme Court over the years have called § 29 drastic in its general effect. That seems the least which can be said of it. One has only to read it to feel this. Its harshness is foreign to the idea, cherished by lawyers everywhere, that the law's business is first and foremost to protect the liberties of the individual, that the safety of the public rests largely on the law's success in doing so. No counterpart, nothing at all similar, can be found in any system of jurisprudence with which we would like ours to be compared. The section has been amended from time to time, on some occasions in apparent reaction to judicial interpretations of it curbing undue exuberance in its enforcement. The amendments have not relaxed its provisions. Instead these have got progressively tighter. The current version is the toughest yet. There is little our Courts can do about legislation of this kind. They can make their distaste for such known, for what that may be worth. It is not a great deal. Parliament seldom takes notice once some policy it considers important is involved."

§ 29 is a uniquely cruel means of exploiting South Africa's work force. For the reasons stated above, § 29 alone would bring the apartheid labor system within the ban of § 1307.

IV

The Proviso

Although § 1307 is designed to protect American labor from competition with forced labor or indentured labor, a proviso to the statute states as follows:

"(B)ut in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in

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such quantities in the United States as to meet the
consumptive demands of the United States."

In the case of the U.S. coal market, the proviso clearly
does not apply. The U.S. Department of Energy offers the
following figures for net tonnage of U.S. production and
consumption of coal:

	<u>1983</u>	<u>1984</u> (first nine months)
U.S. coal production	782,091,000	890,143,000
U.S. coal consumption	736,672,000	795,144,000
South African imports (U.S.)	804,342	490,314
Total Imports (U.S.)	1,271,000	1,218,000

(Source: United States Department of Energy)

U. S. production of coal vastly exceeds domestic
consumption annually by 50 to 100 million tons. The proviso
cannot be invoked to prevent application of the statute.

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Conclusion

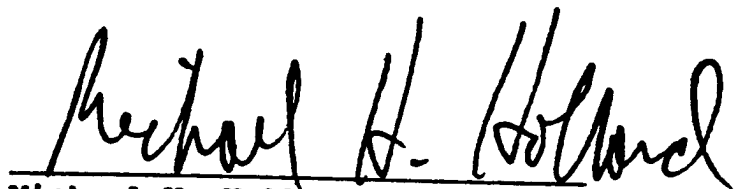
§ 1307 is a remedial statute, designed to protect American labor, and it should be broadly applied. Although the totalitarian apartheid labor system of today did not exist in 1930, when Congress enacted the statute, it is clearly within the scope of the evils that § 1307 was designed to address. It presents a more sinister version, in modern form, of both "forced labor" and "indentured labor under penal sanction."

As a statement of national policy, extensible to the modern evil of apartheid, § 1307 should be applied to ban the importation of South African coal immediately.

Please contact Michael H. Holland, General Counsel, UMWA, or Earl V. Brown, Jr., Associate General Counsel, UMWA, at the address and telephone number listed on this letterhead with respect to any communication about this Petition. We further request to be advised of any communication to and/or from the Republic of South Africa, or its agents, respecting this matter, and request copies of any documents sent to and/or received from the Republic of South Africa.

Respectfully submitted,

By:



Michael H. Holland
Earl V. Brown, Jr.
United Mine Workers of America
900 Fifteenth Street, N. W.
Washington, D. C. 20005
202 / 842-7330

Despres, Schwartz & Geoghegan
77 West Washington Street
Chicago, Illinois 60602
312/372-2511

Attorneys for the UMWA

Exhibit A

Pursuant to 19 C.F.R. § 12.42(b), the UMWA submits the following information not presented in the body of its petition letter.

The product at issue is coal, a carbonaceous mineral, and includes anthracite, bituminous, sub-bituminous, and lignite grades of coal. Coal is principally used in this country by utilities in the generation of steam, by the coke industry to create coke, for the heating of institutions, and by the chemical industry to create coal by-products.

The principal interested domestic producers of coal are members of four associations, the Bituminous Coal Operators Association, the National Coal Association, the American Mining Congress, and the Mining and Reclamation Council. . They may be advised of this Petition as follows:

Bituminous Coal Operators Association, Inc.
918 Sixteenth Street, N. W.
Washington, D. C. 20006

National Coal Association
1130 Seventeenth Street, N. W.
Washington, D. C. 20036

American Mining Congress
1920 "N" Street, N. W.
Washington, D. C. 20036

Mining & Reclamation Council of America
1575 "I" Street, N. W.
Washington, D. C. 20005

Exhibit B

Statutory Appendix

Black (Urban Areas) Consolidation Act,

No. 25 of 1945

Sections 10 and 29

10. Restriction of right of Blacks to remain in certain areas.—(1) No Black shall remain for more than seventy-two hours in a prescribed area unless he produces proof in the manner prescribed that—

- (a) he has, since birth, resided continuously in such area; or**
- (b) he has worked continuously in such area for one employer for a period of not less than ten years or has lawfully resided continuously in such area for a period of not less than fifteen years, and has thereafter continued to reside in such area and is not employed outside such area and has not during either period or thereafter been sentenced to a fine exceeding five hundred rand or to imprisonment for a period exceeding six months; or**
[Para. (b) amended by s. 3 of Act No. 16 of 1979.]
- (c) such Black is the wife, the unmarried daughter, or the son under the age of eighteen years, of any Black mentioned in paragraph (a) or (b) of this subsection and, after lawful entry into such prescribed area, ordinarily resides with that Black in such area; or**
[Para. (c) substituted by s. 6 of Act No. 97 of 1978.]
- (d) in the case of any other Black, permission so to remain has been granted by an officer appointed to manage a labour bureau in terms of the provisions of paragraph (a) of sub-section (6) of section twenty-one *ter* of the Black Labour Regulation Act, 1911 (Act No. 15 of 1911), due regard being had to the availability of accommodation in a Black residential area:**

Provided that whenever any Black who is under this sub-section qualified to remain within any such area for a period in excess of seventy-two hours, becomes disqualified so to remain and cannot within that area or any other such area or outside such area but outside a scheduled Black area or released area as defined in the Development Trust and Land Act, 1936 (Act No. 18 of 1936), obtain employment and accommodation for himself, his wife and children, if any, the Minister shall, if satisfied that such Black cannot so obtain employment and such accommodation, provide that Black with a residential site within any such scheduled Black area or such released area.

[Sub-s. (1) amended by s. 30 (a) of Act No. 36 of 1957 and substituted by s. 47 (a) of Act No. 42 of 1964.]

(1)bis

[Sub-s. (1)bis inserted by s. 5 (a) of Act No. 16 of 1955, amended by s. 30 (b) of Act No. 36 of 1957 and deleted by s. 47 (b) of Act No. 42 of 1964.]

(2) Any Black who has in terms of paragraph (d) of sub-section (1) been permitted to remain in a prescribed area, shall be given a permit which may be by means of an endorsement in a reference book or a document of identification referred to in the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952), indicating the purpose for which and the period during which such Black may remain in

that area, the person by whom and the class of work, if any, in which such Black may be employed and any other conditions which may have been imposed in granting such permission.

[Sub-s. (2) amended by s. 5 (b) and (c) of Act No. 16 of 1955 and by s. 30 (e) of Act No. 36 of 1957 and substituted by s. 47 (c) of Act No. 42 of 1964.]

(3) Any Black who, having obtained employment within an area referred to in sub-section (1), has been refused permission to remain in that area, may appeal against such refusal to the Chief Commissioner for the area in question, whose decision on any such appeal shall be final, and the Commissioner having jurisdiction in that area may, in the event of such an appeal being lodged, in his discretion grant permission to the Black concerned to remain in the area in question pending the decision of such Chief Commissioner on the appeal.

[Sub-s. (3) amended by s. 47 (d) of Act No. 42 of 1964.]

(4) Any person who contravenes any provision of this section, or who remains in any area for a purpose other than that for which permission so to remain has been granted to him, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or in default of payment to imprisonment for a period not exceeding three months or to both such fine and such imprisonment or to such imprisonment without the option of a fine.

[Sub-s. (4) substituted by s. 3 of Act No. 119 of 1977.]

(5) In any criminal proceedings against a Black in respect of a contravention of the provisions of this section, it shall be presumed until the contrary is proved that such Black remained in the area in question for a period longer than seventy-two hours and that such Black is not permitted under sub-section (1) to be in such area.

[Sub-s. (5) substituted by s. 47 (e) of Act No. 42 of 1964.]

(6)

[S. 10 substituted by s. 27 of Act No. 54 of 1952. Sub-s. (6) deleted by s. 47 (f) of Act No. 42 of 1964.]

29. Manner of dealing with idle or undesirable Blacks.—(1) Whenever any authorized officer has reason to believe that any Black within an area outside a scheduled Black area or a released area as defined in the Development Trust and Land Act, 1936 (Act No. 18 of 1936), is an idle or undesirable person, he may, notwithstanding the provisions of any other law, without warrant arrest that Black or cause him to be arrested and take him or cause him to be taken before a Commissioner to be dealt with in accordance with the provisions of this section.

(2) For the purposes of sub-section (1) an "idle person" means a Black, other than a *bona fide* Black housewife—

(a) over the age of fifteen years and under the age of sixty years, in the case of a female, and sixty-five years, in the case of a male, who, whether or not such Black is in receipt of adequate maintenance from his parent or guardian—

(i) though capable of being employed, is not lawfully employed and has, for a period, or for periods in the aggregate, of not less than 122 days during the preceding twelve months, not been lawfully employed and is not *bona fide* engaged in any business, trade, profession or other remunerative activity for which he is in terms of any law licensed or registered with the authority of a labour bureau: Provided that this subparagraph shall not apply in the case of a Black who is registered as a work seeker and was not lawfully offered employment in the preceding 122 days or who is a pupil or student at an educational institution, or who, having completed a course of study at one institution, is awaiting admission to another institution; or

[Sub-para. (i) substituted by s. 3 (a) of Act No. 12 of 1978.]

(ii) has on three consecutive occasions refused or failed without lawful cause to accept suitable employment offered to him by a labour bureau: Provided that no reason for the refusal or failure to take up employment shall be considered a lawful cause unless such reason is tendered to the labour bureau at the time the employment is offered or within three

- (iii) has on more than two occasions during any period of six months, after having taken up employment offered to him by a labour bureau, failed due to his own misconduct, neglect, intemperance or laziness, to keep such employment for at least one month; or
 - (iv) has on more than three occasions over any period of one year been discharged from employment due to his own misconduct;
 - (b) who because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise), fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or
 - (c) who is addicted to drink or drugs, in consequence of which he is unable to provide for his own support or is unable or neglects to provide for the support of any dependant whom he is legally liable to maintain; or
 - (d) who has been required under any law to depart from the area concerned within a period specified in terms of such law and not to return to such area within a period so specified and has failed to depart therefrom within the period so specified or has returned thereto before the expiration of the period so specified; or
 - (e) who habitually begs for money or goods or induces others to beg for money or goods on his behalf.
- (3) For the purposes of sub-section (1) an "undesirable person" means a Black who—
- (a) has been convicted more than once over any period of five years of an offence mentioned in the Third Schedule to the Criminal Procedure Act, 1955 (Act No. 56 of 1955), other than an offence against the laws for the prevention of the supply of intoxicating liquor to Blacks or coloured persons; or
 - (b) has been convicted of selling or supplying intoxicating liquor, other than sorghum beer, or of being in unlawful possession of any such liquor or has been convicted more than once within a period of three years, of selling or supplying sorghum beer or of being in unlawful possession of sorghum beer; or
 - (c) has been convicted of any offence involving public violence in the area concerned; or
 - (d) has been convicted of any offence under any law relating to the illicit possession, conveyance or supply of habit-forming drugs in the area concerned; or
 - (e) has been convicted of any offence involving violence to an officer entrusted with the administration of Black affairs in the area concerned, while carrying out his duties as such and has been sentenced to imprisonment, either with or without the option of a fine, for a period in excess of fourteen days; or
 - (f) has been convicted of any offence for being in possession of an unlicensed firearm in the area concerned; or
 - (g) has been convicted of any offence relating to malicious injury to property belonging to the urban local authority concerned; or
 - (h) has been convicted of any offence under section *ten, eleven, twelve or thirteen* of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956); or
 - (i) has been convicted of any offence in circumstances in which the provisions of section *two* of the Criminal Law Amendment Act, 1953 (Act No. 8 of 1953), apply; or
 - (j) has been convicted of any offence under the Unlawful Organizations Act, 1960 (Act No. 34 of 1960); or
 - (k) has been convicted of any offence under section *twenty-one* of the General Law Amendment Act, 1962 (Act No. 76 of 1962).
- (4) A Black arrested under sub-section (1) shall within seventy-two hours after arrest be brought before a Commissioner.

(9) In addition to any order made in terms of sub-section (7), the Commissioner may further order that the Black concerned shall not at any time thereafter, or during the period specified in the order, enter or remain in any area indicated in the order, except with the written permission of the Secretary.

(10) Any Commissioner having jurisdiction in the area in question may, if a sound reason exists therefor, suspend the execution of any warrant or order issued in terms of subsection (7) for any period and on any conditions determined by him: Provided that the fact that such a warrant or an order so issued against a Black is the first such warrant or order so issued against him, shall not in itself be regarded as such a sound reason.

[Sub-a. (10) substituted by s. 3 (b) of Act No. 12 of 1978.]

(11) Whenever an authorized officer has reason to believe that any condition of suspension of any warrant or order issued under this section is not being observed by a Black, he or any member of the South African Police may without warrant arrest that Black and take him or cause him to be taken before a Commissioner who may then order the execution of any such warrant or order or may, if satisfied that such Black has through circumstances beyond his control or for any other good and sufficient reason been unable to observe any condition of such suspension, further suspend such execution for any further period and on any conditions determined by him.

(12) If any Black enters or remains in any area in contravention of an order made under sub-section (9), he shall be guilty of an offence, and the court convicting him of such offence shall by warrant order that, after he has paid any fine or served any period of imprisonment to which he may be sentenced in respect of that offence, he be dealt with as provided in paragraph (a) or (b) of sub-section (7).

(13) Any dependant of a Black who is ordered to return to his home or to be removed to any rural village, settlement, rehabilitation scheme, institution or any other place, may be removed, together with his personal effects (including household furniture), at the public expense to the said Black's home or to the place to which he has been ordered to be removed.

(14) A Commissioner enquiring into any matter under this section—

- (a) may authorize the finger-prints of any Black who, in terms of this section, is required to give a good and satisfactory account of himself, to be taken;
- (b) may from time to time adjourn the enquiry and may in such case order that the Black concerned be detained in a prison, police cell or lock-up or other place which such Commissioner considers suitable, or release him on bail *mutatis mutandis* as if he were a person whose trial on a criminal charge before an inferior court is adjourned or postponed;
- (c) shall keep a record of the proceedings and may, in his discretion, summon Blacks to sit as assessors with him and to assist him in an advisory capacity.

[Para. (c) substituted by s. 3 (c) of Act No. 12 of 1978.]

(15) The provisions of the law relating to appeals and to any form of review in criminal cases shall *mutatis mutandis* apply in respect of any order made under paragraph (b), (c), (d) or (f) of sub-section (7) as if such order were a sentence passed by a magistrate's court in a criminal case but the noting of an appeal or the submission for review shall not, save where the Commissioner so determines, suspend the operation of such order.

(16) (a) Nothing in this Act contained shall be construed as preventing an order being made or as invalidating or affecting in any manner whatever an order made under sub-section (7) in respect of a Black falling within any of the categories referred to in paragraph (a), (b) or (c) of sub-section (1) of section ten.